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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/981,015	Applicant(s) DISPENSA ET AL.	
	Examiner Sharad Rampuria	Art Unit 2617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-60 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-60 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination under 37 CFR 1.114

I. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/09/2007 has been entered.

Disposition of the claims

II. The current office-action is in response to the RCE filed on 10/09/2007.

Accordingly, Claims 1-60 are imminent for further assessment as follows:

Claim Rejections - 35 USC § 101

III. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 21-40 are rejected under 35 U.S.C. 101, because of non-statutory as describe following:

Regarding claims 21-40, it is clearly calls for “a software product” comprising “code means”.....

As best can be support by the specification (Pg.53; 14-21), “a software product” is actually “a software/computer program” which does not fall within any of the enumerated statutory categories because it is an Abstract Idea, *and the invention as claimed does not produce a useful, concrete, and tangible result.* Therefore, claims 21-40 is nonstatutory. (Please see MPEP 2106.01).

Claim Rejections - 35 USC § 103

IV. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-60 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Moura; Eduardo J. et al.** [US 6104727 A] in view of **Bingham; John A.C. et al.** [US 5644573 A].

As per claim 1, **Moura** teaches:

A method of operating a probe device in a broadband wireless system (Abstract), the method comprising:

receiving a message; processing the message to determine channel information describing actual use of each of a plurality of channels in the broadband wireless system by each of a plurality of users, wherein the channel information describing actual use includes a per-user breakdown of a time spent in each channel; (e.g. an upstream channel is shared by a plurality of remote link adapters in accordance with a credit criterion, and credit control packets are dispatched to a remote link adapter which permit the remote link adapter to send data packets to arbitrary hosts. Upon sending a data packet, the remote link adapter returns the credit control packet to a Hybridware.TM. M server. A credit permits a remote link adapter to send a certain number of packets up to a maximum number controlled by a configuration parameter MAX.sub.-- CREDIT.sub.-- PACKETS, thereby eliminating polling for that period. If a remote link adapter does not have a data packet to send, it returns the credit to the hybrid access system without sending any data packets. The remote link adapter then sets a field in the credit control packet to the number of packets which was sent. If the protocol process at the server does not receive credit status information from the credit control packet within a certain credit time-out, CREDIT.sub.-- TIMEOUT, in milliseconds, for a certain number of times, FAIL.sub.-- CNT, consecutively, the remote link adapter is assumed to be in error and is put in a not-responding state (NON.sub.-- RESP). The overall upstream channel performance of a remote link adapter using a credit channel is lower than a remote link adapter on a sole use upstream

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channel. If any sole use upstream channel becomes available, this channel is given to the credit remote link adapter that has been waiting the longest for a sole use upstream channel that currently has packets to send; Col.14; 55-Col.15; 16)

Moura doesn't teach specifically, storing the channel information in a memory in the probe device; and transferring the channel information from the memory to a user system. However, **Bingham** advocates in an analogous art, that storing the channel information in a memory in the probe device; and transferring the channel information from the memory to a user system. (e.g. storing; Col.4; 2-14, Col.14; 30-48) Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify **Moura** including storing the channel information in a memory in the probe device; and transferring the channel information from the memory to a user system in order to provide a method of discrete multi-tone communication systems in which a central unit services a plurality of remote units.

As per claim 2, **Moura** teaches:

The method of claim 1 wherein the channels are upstream. (e.g. upstream; Col.14; 55-Col.15; 16)

As per claim 3, **Moura** teaches:

The method of claim 1 wherein the channels are downstream. (e.g. downstream; Col.14; 55-Col.15; 16)

As per claim 4, **Moura** teaches:

The method of claim 1 wherein the message is a credit that allows usage of one of the channels. (e.g. credit; Col.14; 55-Col.15; 16)

As per claim 5, **Moura** teaches:

The method of claim 1 wherein the message indicates a completion of usage of one of the channels. (e.g. completion; Col.13; 11-24)

As per claim 6, **Moura** teaches:

The method of claim 1 wherein the probe device is connected to a switch in the broadband wireless system. (e.g. Col.5; 40-54)

As per claim 7, **Moura** teaches:

The method of claim 1 wherein the probe device is connected to an upstream manager in the broadband wireless system. (e.g.; Col.13; 11-24)

As per claim 8, **Moura** teaches:

The method of claim 1 wherein the probe device is connected to a downstream manager in the broadband wireless system. (e.g. downstream; Col.14; 55-Col.15; 16)

As per claim 9, **Moura** teaches:

The method of claim 1 wherein processing the message comprises determining a state of one of the channels. (e.g. state of channels; Col.14; 55-Col.15; 16)

As per claim 10, **Moura** teaches:

The method of claim 9 wherein the state is polling. (e.g. polling; Col.14; 55-Col.15; 16)

As per claim 11, **Moura** teaches:

The method of claim 9 wherein the state is dedicated. (e.g. dedicated; Col.15; 47-60)

As per claim 12, **Moura** teaches:

The method of claim 9 wherein the state is idle. (e.g. idle; Col.8; 37-43)

As per claim 13, **Moura** teaches:

The method of claim 9 further comprising determining a time in the state. (e.g. time; Col.10; 56-64)

As per claim 14, **Moura** teaches:

The method of claim 1 wherein processing the message comprises monitoring a number of bytes transmitted. (e.g. bytes transmitted; Col.2; 13-34)

As per claim 15, **Moura** teaches:

The method of claim 1 wherein processing the message comprises monitoring a number of messages transmitted during a state of one of the channels. (e.g. transmitted; Col.14; 55-Col.15; 16)

As per claim 16, **Moura** teaches:

The method of claim 1 wherein the channel information comprises a state of one of the channels. (e.g. state of channels; Col.14; 55-Col.15; 16)

As per claim 17, **Moura** teaches:

The method of claim 1 wherein the channel information comprises a change in a state of one of the channels. (e.g. state of channels; Col.14; 55-Col.15; 16)

As per claim 18, **Moura** teaches:

The method of claim 1 wherein the channel information comprises a number of bytes transmitted. (e.g. bytes transmitted; Col.2; 13-34)

As per claim 19, **Moura** teaches:

The method of claim 1 wherein the channel information comprises a number of messages transmitted. (e.g. transmitted; Col.14; 55-Col.15; 16)

As per claim 20, **Moura** teaches:

The method of claim 1 wherein the channel information comprises a time in a state of one of the channels. (e.g. state of channels; Col.14; 55-Col.15; 16)

Claims 21-40, 41-60 are the **product, device**, claims, corresponding to **method** claims 1-20 respectively, and rejected under the same rationale set forth in connection with the rejection of claims 1-20 respectively, above.

Response to Amendments & Remarks

V. Applicant's arguments with respect to claims 1-60 has been fully considered but is moot in view of the new ground(s) of rejection.

Conclusion

VI. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharad Rampuria whose telephone number is (571) 272-7870. The examiner can normally be reached on M-F. (8:30-5 EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Trost can be reached on (571) 272-7872. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000 or

EBC@uspto.gov.

/Sharad Rampuria/
Primary Examiner
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